

1 BILL NO. S-86-05-49 *(as amended)*

2 SPECIAL ORDINANCE NO. S *Lash*

3
4 AN ORDINANCE to provide for Collective
5 Bargaining with respect to employees of
the City of Fort Wayne, Indiana.

6 WHEREAS, the City has previously committed itself to
7 Collective Bargaining with its employees as so stated in a prior
8 ordinance cited now as Section 20-16(d) of the Municipal Code
9 of the City of Fort Wayne, Indiana. This provision of the
10 Municipal Code applies to all City employees and provides as
11 follows:

12 "It is the policy of the City of Fort Wayne,
13 Indiana to ensure meaningful and conscientious
Collective Bargaining which results in fair and
equitable wages for all employees of the City."

14
15 WHEREAS, such commitment to Collective Bargaining is
16 further evidenced by the fact that the city recognizes and has
17 had labor agreements with nine different labor organizations,
18 three of which operate in the Public Safety sector and six unions
19 which operate in the non-safety sector, those unions being:
20 Firemen and Oilers; International Association of Machinists and
21 Aerospace Workers; International Brotherhood of Electrical Workers;
22 International Union of Operating Engineers; Teamsters Local of
23 IB of TCW&H; and Office and Professional Employees International
24 Union; and

25 WHEREAS, each such labor organization, as herein
26 referred to, has or has had a signed labor agreement with the
27 City which provides for: A defined Bargaining Unit of representa-
28 tion; Grievance and Negotiation procedures; and all other
29 Bargainable matters with respect to terms and conditions of those
30 employees represented by each labor organization; and

31
32

1 WHEREAS, the City has and continues to Bargain
2 Collectively with each such labor organization with respect to
3 terms and conditions of employment, including wages, regarding
4 the employees that each such labor organization represents; and

5 WHEREAS, each labor agreement as executed by and between
6 the City and each respective labor organization provides for
7 mutually agreed upon administrative steps to settle disputes
8 as to contractual interpretations, these administrative steps
9 including the right to arbitration over contractual disputes; and

10 WHEREAS, State Law requires that wages for all City
11 employees be ultimately approved by the Common Council; and

12 WHEREAS, each such Labor Agreement requires good faith
13 bargaining and negotiations with respect to the establishment
14 of terms and conditions of employment including wages; and

15 WHEREAS, the City and the Common Council are desirous
16 of reconfirming and codifying the City's commitment to Collective
17 Bargaining and negotiation with its employees in a fashion that is
18 fiscally responsible, reasonable, fair and equitable to the public
19 and the employees of this City.

20 NOW, THEREFOR, BE IT ORDAINED BY THE COMMON COUNCIL OF
21 THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

22 SECTION 1. Reference. This Ordinance may be cited
23 and referred to as the City Employees's Collective Bargaining
Ordinance.

24 SECTION 2. Policy. It is hereby declared to be the
public policy of the City of Fort Wayne, Indiana:

- 25 A. That the City should recognize each labor organization
26 as selected by the majority of employees in an
appropriate unit, and that such organization should
have the right to bargain collectively in their
respective member's behalf.
- 28 B. That a reasonable, fair and equitable method of
settling disputes between City employees and the
City of Fort Wayne, Indiana should be established
in the public interest.

31 SECTION 3. Application. This Ordinance shall apply to
32 all non-confidential, non-supervisory, and non-exempt positions
of the City and its Utilities (other than public safety employees
of the City) who are presently represented by labor organizations
or who subsequently desire to be so represented. For purposes
hereof "public safety" employees shall be police and fire
employees who are covered by separate local legislation.

1 SECTION 4. Definitions. As used in this Ordinance,
2 the following terms shall have the following meanings, unless
3 the context requires a different interpretation:
4

- 5 A. The term "City" shall mean the City of Fort Wayne,
6 Indiana and those officially designated person(s)
7 by the Mayor, who shall act on behalf of the City
8 on all factors.
- 5 B. The term "Factors" shall mean wages, hours of
6 employment, fringe benefits and working conditions.
- 7 C. The term "Exclusive Representative" shall mean the
8 labor organization selected by the majority of
9 employees in an appropriate unit to represent them
as to wages, hours of employment, fringe benefits
and working conditions.

10 SECTION 5. Rights of Employees. City employees shall
11 have the right to form, join, or assist employee organizations, to
12 participate in Collective Bargaining with the City through
13 representatives of their own choosing and to engage in all other
14 legal activities, individually or in concert, for the purpose of
15 establishing, maintaining, or improving terms and conditions of
16 employment, or other factors. The representative labor organizations
17 shall be selected by the majority of employees in an appropriate
unit. The unit shall be recognized as the exclusive representative,
unless and until such recognition is withdrawn by a vote of majority
of employees in the unit. All elections shall be by secret ballot.
Further, no City employee shall, as a condition of employment
be required to become a member of his or her appropriate bargaining
unit. However, in lieu of such membership, said employee shall
pay to the respective bargaining unit a representation fee as
determined by each Collective Bargaining Agreement.

18 SECTION 6. Payroll Deduction of Employees' Organization
Fees. The City shall, upon written receipt of the authorization
19 of a City employee, deduct from the pay of that employee any fee
20 designated or certified by the appropriate officer of an employees'
organization, and shall remit those fees to the employee's
21 organization.

22 SECTION 7. Unfair Labor Practices.

or its agents

- 23 A. It shall be an Unfair Labor Practice for the City to:
 - 24 (1) Interfere with, restrain, or coerce employees in
the exercise of the rights guaranteed in this
Ordinance;
 - 25 (2) Dominate, interfere with, or assist in the
formation or administration of any employees'
organization or contribute financial or other
support to it;
 - 26 (3) Discriminate in regard to hiring or conditions
of employment, to encourage or discourage
membership in any employees' organization;
 - 27 (4) Discharge or otherwise discriminate against
an employee because he has filed a complaint,
affidavit, petition or given any information
or testimony for the purpose of Collective
Bargaining or of the adjustment of grievances;

- (5) Refuse to Bargain Collectively in good faith with an exclusive representative;
 - (6) Breach a Collective Bargaining Agreement;
 - (7) Fail or refuse to comply with any provision of this Ordinance.

B. It shall be an Unfair Labor Practice for any Bargaining Unit, or its agents, or any City Employee to:

- (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in this Ordinance;
 - (2) Restrain, coerce, or otherwise interfere with City employees in their selection of agents to represent them in Collective Bargaining negotiations or the settlement of grievances;
 - (3) Cause or attempt to cause the City to discriminate against an employee;
 - (4) Discriminate against any public employee whose membership in an employee organization has been denied or terminated for reasons other than failure to pay membership dues;
 - (5) Refuse to bargain collectively in good faith with an employer, provided it is the exclusive representative;
 - (6) Breach a Collective Bargaining Agreement;
 - (7) Fail or refuse to comply with any provision of this Ordinance.

C. The following procedures, rights and remedies shall apply to Unfair Labor Practices:

- (1) If either the City or a bargaining unit feels the other has committed an Unfair Labor Practice as herein provided, they shall follow the terms and conditions of their labor agreements, if any, with respect to allegations of Unfair Labor Practices. Any allegation of an Unfair Labor Practice shall be made in writing and delivered to the respective party. Upon delivery of any such written allegations, and to ensure effective resolution of those allegations, the following negotiation procedure shall be utilized:

(A) To initially commence an Unfair Labor Practice Negotiation, the parties shall follow the terms and conditions of their labor agreement, if any, with respect to notifications regarding the intent and desire to negotiate allegations of Unfair Labor Practices. The parties shall meet and negotiate in good faith at all negotiation meetings required under such labor agreement. This requirement to initially meet and negotiate shall include

1 three (3) mandatory Unfair Labor Practice
2 Negotiation sessions to take place within
3 thirty (30) calendar days after written alle-
4 gation of Unfair Labor Practice has been
5 received;

6 (B) If after exhaustion of Step (A) above, the
7 parties have not reached an agreement as to
8 the resolution of the allegation of Unfair
9 Labor Practices on the part of the other, the
10 parties will still be obligated to meet and
11 negotiate in good faith. In that regard, the
12 parties shall be required to have at least
13 two (2) additional Unfair Labor Practice
14 Negotiation sessions within a fourteen (14)
15 calendar day period after the ending of the
16 thirty (30) day period referenced in sub-
17 paragraph (A) above;

18 (C) If an impasse still exists after Steps
19 (A) and (B) above, the parties shall continue
20 to confer and meet for purposes of resolving
21 allegations of Unfair Labor Practices, and the
22 parties shall utilize a three (3) member panel
23 mediation committee. The three (3) member
24 panel shall be appointed as follows:

25 A representative designated by the mayor, such
26 representative not previously involved in the
27 Collective Bargaining process with the City
28 and the Union in question;

29 A representative designated by the Union, such
30 representative not previously involved in the
31 Collective Bargaining process with the City and
32 the Union in question;

33 And a mediator from the Federal Mediation and
34 Conciliation Service.

35 Members of the panel shall serve without compen-
36 sation. The three (3) member panel shall per-
37 form mediation functions between the parties
38 and shall be utilized to define the differ-
39 ences between the parties; their respective
40 positions; and to evaluate each such position
41 and make recommendations as to a fair and just
42 settlement.

43 The three (3) member panel shall have the right
44 to meet with either side alone or with both
45 sides and further require meetings between
46 the parties for purposes of resolving alle-
47 gements of Unfair Labor Practices. Such
48 mediation process under this subparagraph (C)
49 shall occur for a period of thirty (30) calen-
50 dar days.

51 The time limits, and other requirements as
52 referenced in subparagraphs (A), (B), and (C)
53 may be altered or changed by mutual agreement
54 of the City and the appropriate bargaining
55 unit.

- (2) After completion of Steps (A), (B), and (C) as set out above, and allegations of Unfair Labor Practices are yet unresolved, both parties are urged to continue negotiations in hopes of reaching a settlement. Unless time limits are mutually extended by the parties as contained in this section, each shall have the following rights:

(3) If after, the exhaustion of Steps (A), (B), and (C) above, either the City or the bargaining unit still contends that the other party has committed an Unfair Labor Practice, the City shall have the right to terminate the existing labor agreement, and the bargaining unit shall have the right to engage in an Unfair Labor Practice Strike. Such strike must be duly sanctioned by the bargaining unit and any and all such picketing associated with the strike shall be off work premises. The right to such strike shall not include a right to a slow down at work, but rather an Unfair Labor Practice Striker shall be required to leave work. Appropriate rules governing strikes and picketing with respect to peacefulness and access to City property and private property shall be observed. Unfair Labor Strikers can neither be discharged nor permanently replaced, absent serious misconduct on their part. Unfair Labor Strikers shall be entitled to have their jobs back even if employees hired to their work have to be discharged; provided the City is found by an arbitrator to have been guilty of an Unfair Labor Practice.

(4) The matter of an allegation of an Unfair Labor Practice as herein provided shall be submitted by the charging party to an arbitrator as provided by the Federal Mediation and Conciliation Services. Upon submission of a charge by one party that an Unfair Labor Practice has occurred, the other party shall immediately and fully cooperate in selecting an arbitrator as soon as possible.

(5) The arbitrator shall have the right to determine whether or not an Unfair Labor Practice has occurred, and if so found, the arbitrator shall have the ability to select the appropriate remedy, including, but not limited to, the issuance of a cease and desist order, back pay, reinstatement and/or damages. In the event an arbitrator finds that an Unfair Labor Practice has occurred, the guilty party shall be required to pay all costs of arbitration, which shall be defined as arbitrator's fees (if any); court reporter fees; and any facilities rental if not arbitrated on City premises. On the other hand, if no such charge is found by the arbitrator, the charging party shall so be responsible for paying such costs.

- (6) The finding of an Unfair Labor Practice on the part of the City by an arbitrator shall end an Unfair Labor Practice Strike and shall entitle Unfair Labor Strikers to their jobs back as set out above. The finding of an Unfair Labor Practice on the part of the bargaining unit shall confirm the termination of the labor agreement by the City. The finding of no Unfair Labor Practice on the part of the City shall immediately end the Unfair Labor Practice Strike and the right of all Unfair Labor practice strikers to have their jobs back as herein provided shall be forfeited. The findings of no Unfair Labor Practice on the part of the bargaining unit shall require the City to reinstate the labor agreement previously terminated.

(7) Either party shall have the right to forego its rights under paragraph 3, and immediately submit a charge of Unfair Labor Practice to an arbitrator as herein provided. Either party shall have a period of six (6) months from the date of an occurrence to exercise its rights under this section. If such rights are not exercised within six (6) months, the charging party shall be barred from exercising those rights at a later date. In the event, however, either party does exercise its rights under paragraph 3 above, the ultimate question of whether there has been an Unfair Labor Practice shall be submitted to an arbitrator as provided herein at such time as those rights to an Unfair Labor Strike by the bargaining unit or to terminate the labor agreement by the City are exercised.

SECTION 8. Duties and Negotiation Process. It shall be the obligation of the City and the applicable Bargaining Units to meet and bargain in good faith for Collective Bargaining purposes. The obligation to bargain in good faith shall include the duty to cause any agreement, resulting from such negotiations, to be reduced to writing. A contract may also contain a grievance procedure culminating in final and binding arbitration on unresolved grievances, but such binding arbitration shall have no power to amend, add to, subtract from or supplement provisions of the contract; provided, however, that the term of any such contract in writing shall not exceed three (3) years. The person(s) designated by the Mayor to represent the City are hereby authorized to conduct all negotiations. Persons so designated shall not be elected government officials. The Mayor shall keep the Common Council informed at regular intervals of the progress of negotiations. To ensure effective Collective Bargaining, as much as is possible, and to further expedite the Collective Bargaining process the following negotiation procedure shall be utilized:

(A) To initially commence Collective Bargaining the parties shall follow the terms and conditions of their labor agreement with respect to notifications regarding the intent and desire to negotiate. The parties shall attend and Collectively Bargain in good faith at all negotiation meetings that may be required under each such Collective Bargaining Agreement. This requirement

1 to initially meet and negotiate shall include three (3)
2 mandatory Collective Bargaining sessions between the
3 parties, such meetings all to take place within thirty
4 (30) calendar days after initial notification as pro-
5 vided by one party to the other concerning the commence-
6 ment of Collective Bargaining;

7 (B) If after exhaustion of Step (A) above, the parties
8 have not reached an agreement, the parties will still
9 be obligated to bargain in good faith. In that regard
10 the parties shall be required to have at least two (2)
11 bargaining sessions within a fourteen (14) calendar day
12 period after the ending of the thirty (30) day period
13 referenced in subparagraph (A) above;

14 (C) If impasse still exists after Steps (A) and (B)
15 above, then the parties shall continue to confer and
16 meet for the purposes of Collective Bargaining and the
17 parties shall utilize a three (3) member panel mediation
18 committee. The three (3) member panel shall be ap-
19 pointed as follows:

20 A representative designated by the mayor, such repre-
21 sentative not previously involved in the Collective
22 Bargaining process with the City and the Union in
23 question;

24 A representative designated by the union, such repre-
25 sentative not previously involved in the Collective
26 Bargaining process with the City and the Union in
27 question;

28 And a mediator from the Federal Mediation and Concilia-
29 tion Service.

30 Members of the panel shall serve without compensation.
31 The three (3) member panel shall perform mediation
32 functions between the parties and shall be utilized to
33 define the differences between the parties; their re-
34 spective positions; and to evaluate each such position
35 and make recommendations as to a fair and just settle-
36 ment. The matters, among others, to be given weight by
37 the mediation panel in arriving at a decision shall
38 include:

- 39 (1) Comparison of factors in respect to City Depart-
40 ments with similar and like factors prevailing in
41 other Second Class cities in Indiana;
42 (2) The interest and welfare of the public;
43 (3) Comparison of peculiarities of employment in regard
44 to other trades or professions, in particular:
45 (a) Hazards of employment
46 (b) Physical qualifications
47 (c) Educational qualifications
48 (d) Mental qualifications
49 (e) Job training and skills
50 (4) Such other matters as the mediation panel may deem
51 pertinent or relevant.

1 The three (3) member panel shall have the right to meet with
2 either side alone or with both sides and further require meetings
3 between the parties for purposes of Collective Bargaining. Such
4 mediation process under this subparagraph (C) shall occur for
5 a period of thirty (30) calendar days.

6 The time limits and other requirements as referenced in subpara-
7 graphs (A), (B) and (C) may be altered or changed by mutual
8 agreement of the City and the appropriate Labor Organization.
9 The requirements to bargain and negotiate as herein referenced
10 in this Section 8 shall not impose upon either side the duty
11 to bargain over issues that are part and parcel of a Collective
12 Bargaining Agreement that have not expired.

13 In addition, during Steps (A), (B) and (C) both parties shall
14 adhere to the terms and conditions of the Collective Bargaining
15 Agreement even though same may have expired on its face. That
16 is, such agreement shall be deemed to be in full force and effect
17 during Steps (A), (B) and (C) and the City shall not have the
18 right to terminate the agreement during such period nor the
19 right to unilaterally change the terms and conditions thereof
20 including the payment of wages. Likewise, the Union shall be
21 obligated to follow the terms and conditions of the appropriate
22 Collective Bargaining Agreement during such Steps.

23 SECTION 9. Economic Recourse. After completion of
24 Steps (A), (B) and (C), as contained in Section 8 above and
25 an impasse still exists, both parties are urged to continue
26 Collective Bargaining in hopes of reaching a settlement. Unless
27 time limits are mutually extended by the parties, each party
28 shall have rights as contained in this Section 9. Either party
29 shall have the right to terminate the Collective Bargaining
30 Agreement by serving written notice upon the other with a copy
31 of same being given to the three (3) member panel. Such notice
32 shall indicate that the notifying party is desirous of terminating
33 the labor agreement, specifying in the notice the date upon
34 which termination shall occur, such date being no less than
35 seven (7) days from date of giving notice. During this seven
36 (7) day period, the parties shall meet and confer. In addition,
37 the three (3) member panel shall have the right within such
38 seven (7) day period or other longer notice period, if so provided,
39 to require the parties to meet and negotiate one (1) additional
40 time within the notice period. Upon the lapsing of the notice
41 period the Union may resort to appropriate economic recourse
42 including but not limited to the right to strike. Such strike
43 must be duly sanctioned by the labor organization and any and
44 all such picketing associated with the strike shall be off work
45 premises. The right to strike shall not include a right to
46 a slow down at work, but rather a striking employee shall be
47 required to leave work. Appropriate rules governing strikes
48 and picketing with respect to peacefulness; access to City proper-
49 ty; and private property shall be observed. In the event a
50 labor organization is terminated as herein provided, the City
51 shall no longer, at its option, be bound by the labor agreement.

52 The City employees shall have the right to engage in the right
53 to strike. If the object of a strike is to obtain from the
54 City some economic concession, such as higher wages, shorter
55 hours, or better conditions of employment, the strike shall
56 be called an Economic Strike. They retain their status as em-
57 ployees and cannot be discharged, but they can be replaced by
58 the City. If the City has hired bona fide permanent replacements
59 who are filling the jobs of the economic strikers when the strikers

1 apply unconditionally to go back to work, the strikers are not
2 entitled to reinstatement at that time. However, if the strikers
3 do not obtain regular and substantially equivalent employment,
4 they are entitled to be recalled to jobs for which they are
5 qualified when openings in such jobs occur if they, or their
bargaining representative, have made an unconditional request
for their reinstatement. If an offer to return has been rejected,
the workers lose their entitlement to be subsequently recalled
to jobs for which they are qualified.

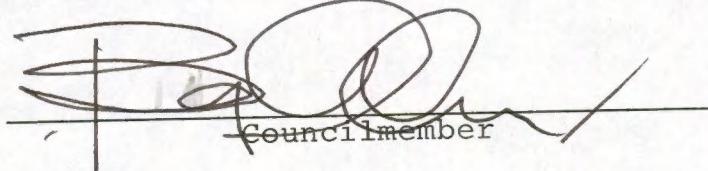
6 If a Mediator or Judge finds that Economic Strikers or Unfair
7 Labor Practice Strikers who have made an unconditional request
for reinstatement have been unlawfully denied reinstatement
by the City, the Mediator or Judge may award such strikers backpay
8 starting at the time they should have been reinstated.

9 SECTION 10. Severability. If any term or provision
10 of this Ordinance is deemed to be unenforceable, illegal or
unconstitutional or otherwise invalid as so deemed by a Court
11 of competent jurisdiction, then the remaining provisions of
this Ordinance shall not be affected thereby.

12 SECTION 11. Common Council Approval. Notwithstanding
13 anything herein to the contrary, all decisions in regards to
annual pay and monetary fringe benefits shall be subject to
14 approval by the Common Council, in accordance with Budgetary
Guidelines, as provided by I.C. 36-4-7-3.

15 SECTION 12. Effective Date. This Ordinance shall
16 be in full force and effect commencing September 1, 1986, assuming
same has been passed by the Common Council and duly approved
17 by the Mayor; provided, however, that this Ordinance shall apply
only to those bargaining units who have signed contracts with
18 the City by that date. Once a bargaining unit has signed a
contract, it is covered by this Ordinance.

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Councilmember

APPROVED AS TO FORM AND LEGALITY

Bruce O. Boxberger, City Attorney

Stanley A. Levine, Attorney for Common Council

Read the first time in full and on motion by Eisbark, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee Regulators (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the 19 day of _____, at _____ o'clock M., E.S.T.

DATE: 5-27-86

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Bradbury, seconded by Stier, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>1</u>	<u>8</u>			
<u>BRADBURY</u>		<u>✓</u>			
<u>BURNS</u>	<u>✓</u>				
<u>EISBART</u>		<u>✓</u>			
<u>GiaQUINTA</u>		<u>✓</u>			
<u>HENRY</u>		<u>✓</u>			
<u>REDD</u>		<u>✓</u>			
<u>SCHMIDT</u>		<u>✓</u>			
<u>STIER</u>		<u>✓</u>			
<u>TALARICO</u>		<u>✓</u>			

DATE: 6-24-86

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING MAP) ORDINANCE (RESOLUTION) NO. _____
on the _____ day of _____, 19_____,

ATTEST:

(SEAL)

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana,
on the _____ day of _____, 19_____,
at the hour of _____ o'clock M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____,
19_____, at the hour of _____ o'clock M., E.S.T.

WIN MOSES, JR., MAYOR

1 BILL NO. S-86-05-49

2 SPECIAL ORDINANCE NO. S-_____

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18 further evidenced by the fact that the city recognizes and has
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21 which operate in the non-safety sector, those unions being:
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23 Aerospace Workers; International Brotherhood of Electrical Workers
24 International Union of Operating Engineers; Teamsters Local of
25 Teamsters of Chaffeurs Warehousemen & Helpers
26 B of ICW&H; and Office and Professional Employees International
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8 as to contractual interpretations, these administrative steps
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15 WHEREAS, the City and the Common Council are desirous
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17 Bargaining and negotiation with its employees in a fashion that is
18 fiscally responsible, reasonable, fair and equitable to the public
19 and the employees of this City.

20 NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF
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31 respective member's behalf.
- 32 B. That a reasonable, fair and equitable method of
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34 City of Fort Wayne, Indiana should be established
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36 SECTION 3. Application. This Ordinance shall apply to
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38 of the City and its Utilities (other than public safety employees
39 of the City) who are presently represented by labor organizations
40 or who subsequently desire to be so represented. For purposes
41 hereof "public safety" employees shall be *police and *fire
42 employees who are covered by separate local legislation.

* Commissioned

1 SECTION 4. Definitions. As used in this Ordinance,
2 the following terms shall have the following meanings, unless
3 the context requires a different interpretation:

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- 5 A. The term "City" shall mean the City of Fort Wayne,
6 Indiana and those officially designated person(s)
7 by the Mayor, who shall act on behalf of the City
8 on all factors.
- 9 B. The term "Factors" shall mean wages, hours of
10 employment, fringe benefits and working conditions.
- 11 C. The term "Exclusive Representative" shall mean the
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13 employees in an appropriate unit to represent them
14 as to wages, hours of employment, fringe benefits
15 and working conditions.

16 SECTION 5. Rights of Employees. City employees shall
17 have the right to form, join, or assist employee organizations, to
18 participate in Collective Bargaining with the City through
19 representatives of their own choosing and to engage in all other
20 legal activities, individually or in concert, for the purpose of
21 establishing, maintaining, or improving terms and conditions of
22 employment, or other factors. The representative labor organization
23 shall be selected by the majority of employees in an appropriate
24 unit. The unit shall be recognized as the exclusive representative
25 unless and until such recognition is withdrawn by a vote of majorit
26 of employees in the unit. All elections shall be by secret ballot.
27 Further, no City employee shall, as a condition of employment
28 be required to become a member of his or her appropriate bargaining
29 unit. However, in lieu of such membership, said employee shall
30 pay to the respective bargaining unit a representation fee as
31 determined by each Collective Bargaining Agreement.

32 SECTION 6. Payroll Deduction of Employees' Organization
Fees. The City shall, upon written receipt of the authorization
of a City employee, deduct from the pay of that employee any fee
designated or certified by the appropriate officer of an employees'
organization, and shall remit those fees to the employee's
organization.

33 SECTION 7. Unfair Labor Practices.

Or. Agent
to

- 34 A. It shall be an Unfair Labor Practice for the City to
- 35 (1) Interfere with, restrain, or coerce employees in
36 the exercise of the rights guaranteed in this
37 Ordinance;
- 38 (2) Dominate, interfere with, or assist in the
39 formation or administration of any employees'
40 organization or contribute financial or other
41 support to it;
- 42 (3) Discriminate in regard to hiring or conditions
43 of employment, to encourage or discourage
44 membership in any employees' organization;
- 45 (4) Discharge or otherwise discriminate against
46 an employee because he has filed a complaint,
47 affidavit, petition or given any information
48 or testimony for the purpose of Collective
49 Bargaining or of the adjustment of grievances;

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- (5) Refuse to Bargain Collectively in good faith with an exclusive representative;
- (6) Breach a Collective Bargaining Agreement;
- (7) Fail or refuse to comply with any provision of this Ordinance.

B. It shall be an Unfair Labor Practice for any Bargaining Unit, or its agents, or any City Employee to:

- (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in this Ordinance;
- (2) Restrain, coerce, or otherwise interfere with City employees in their selection of agents to represent them in Collective Bargaining negotiations or the settlement of grievances;
- (3) Cause or attempt to cause the City to discriminate against an employee;
- (4) Discriminate against any public employee whose membership in an employee organization has been denied or terminated for reasons other than failure to pay membership dues;
- (5) Refuse to bargain collectively in good faith with an employer, provided it is the exclusive representative;
- (6) Breach a Collective Bargaining Agreement;
- (7) Fail or refuse to comply with any provision of this Ordinance.

C. The following procedures, rights and remedies shall apply to Unfair Labor Practices:

- (1) If either the City or a bargaining unit feels the other has committed an Unfair Labor Practice as herein provided, they shall follow the terms and conditions of their labor agreements, if any, with respect to allegations of Unfair Labor Practices. Any allegation of an Unfair Labor Practice shall be made in writing and delivered to the respective party. Upon delivery of any such written allegations, and to ensure effective resolution of those allegations, the following negotiation procedure shall be utilized:
- (A) To initially commence an Unfair Labor Practice Negotiation, the parties shall follow the terms and conditions of their labor agreement, if any, with respect to notifications regarding the intent and desire to negotiate allegations of Unfair Labor Practices. The parties shall meet and negotiate in good faith at all negotiation meetings required under such labor agreement. This requirement to initially meet and negotiate shall include

three (3) mandatory Unfair Labor Practice Negotiation sessions to take place within thirty (30) calendar days after written allegation of Unfair Labor Practice has been received;

(B) If after exhaustion of Step (A) above, the parties have not reached an agreement as to the resolution of the allegation of Unfair Labor Practices on the part of the other, the parties will still be obligated to meet and negotiate in good faith. In that regard, the parties shall be required to have at least two (2) additional Unfair Labor Practice Negotiation sessions within a fourteen (14) calendar day period after the ending of the thirty (30) day period referenced in subparagraph (A) above;

(C) If an impasse still exists after Steps (A) and (B) above, the parties shall continue to confer and meet for purposes of resolving allegations of Unfair Labor Practices, and the parties shall utilize a three (3) member panel mediation committee. The three (3) member panel shall be appointed as follows:

A representative designated by the mayor, such representative not previously involved in the Collective Bargaining process with the City and the Union in question;

A representative designated by the Union, such representative not previously involved in the Collective Bargaining process with the City and the Union in question;

And a mediator from the Federal Mediation and Conciliation Service.

Members of the panel shall serve without compensation. The three (3) member panel shall perform mediation functions between the parties and shall be utilized to define the differences between the parties; their respective positions; and to evaluate each such position and make recommendations as to a fair and just settlement.

The three (3) member panel shall have the right to meet with either side alone or with both sides and further require meetings between the parties for purposes of resolving allegations of Unfair Labor Practices. Such mediation process under this subparagraph (C) shall occur for a period of thirty (30) calendar days.

The time limits, and other requirements as referenced in subparagraphs (A), (B), and (C) may be altered or changed by mutual agreement of the City and the appropriate bargaining unit.

(2) After completion of Steps (A), (B), and (C) as set out above, and allegations of Unfair Labor Practices are yet unresolved, both parties are urged to continue negotiations in hopes of reaching a settlement. Unless time limits are mutually extended by the parties as contained in this section, each shall have the following rights:

(3) after, the exhaustion of Steps (A), (B), and (C) above, either the City or the bargaining unit still contends that the other party has committed an Unfair Labor Practice, the City shall have the right to terminate the existing labor agreement, and the bargaining unit shall have the right to engage in an Unfair Labor Practice Strike. Such strike must be duly sanctioned by the bargaining unit and any and all such picketing associated with the strike shall be off work premises. The right to such strike shall not include a right to a slow down at work, but rather an Unfair Labor Practice Striker shall be required to leave work. Appropriate rules governing strikes and picketing with respect to peacefulness and access to City property and private property shall be observed. Unfair Labor Strikers can neither be discharged nor permanently replaced, absent serious misconduct on their part. Unfair Labor Strikers shall be entitled to have their jobs back even if employees hired to their work have to be discharged; provided the City is found by an arbitrator to have been guilty of an Unfair Labor Practice.

3 (4) The matter of an allegation of an Unfair Labor Practice as herein provided shall be submitted by the charging party to an arbitrator as provided by the Federal Mediation and Conciliation Services. Upon submission of a charge by one party that an Unfair Labor Practice has occurred, the other party shall immediately and fully cooperate in selecting an arbitrator as soon as possible.

4 (5) The arbitrator shall have the right to determine whether or not an Unfair Labor Practice has occurred, and if so found, the arbitrator shall have the ability to select the appropriate remedy, including, but not limited to, the issuance of a cease and desist order, back pay, reinstatement and/or damages. In the event an arbitrator finds that an Unfair Labor Practice has occurred, the guilty party shall be required to pay all costs of arbitration, which shall be defined as arbitrator's fees (if any); court reporter fees; and any facilities rental if not arbitrated on City premises. On the other hand, if no such charge is found by the arbitrator, the charging party shall so be responsible for paying such costs.

16)

The finding of an Unfair Labor Practice on the part of the City by an arbitrator shall end an Unfair Labor Practice Strike and shall entitle Unfair Labor Strikers to their jobs back as set out above. The finding of an Unfair Labor Practice on the part of the bargaining unit shall confirm the termination of the labor agreement by the City. The finding of no Unfair Labor Practice on the part of the City shall immediately end the Unfair Labor Practice Strike and the right of all Unfair Labor practice strikers to have their jobs back as herein provided shall be forfeited. The findings of no Unfair Labor Practice on the part of the bargaining unit shall require the City to reinstate the labor agreement previously terminated.

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Either party shall have the right to forego its rights under paragraph 1, and immediately submit a charge of Unfair Labor Practice to an arbitrator as herein provided. Either party shall have a period of six (6) months from the date of an occurrence to exercise its rights under this section. If such rights are not exercised within six (6) months, the charging party shall be barred from exercising those rights at a later date. In the event, however, either party does exercise its rights under paragraph 3 above, the ultimate question of whether there has been an Unfair Labor Practice shall be submitted to an arbitrator as provided herein at such time as those rights to an Unfair Labor Strike by the bargaining unit or to terminate the labor agreement by the City are exercised.

SECTION 8.6 Duties and Negotiation Process.

It shall be the obligation of the City and the applicable Bargaining Units to meet and bargain in good faith for Collective Bargaining purposes. The obligation to bargain in good faith shall include the duty to cause any agreement, resulting from such negotiations, to be reduced to writing. A contract may also contain a grievance procedure culminating in final and binding arbitration on unresolved grievances, but such binding arbitration shall have no power to amend, add to, subtract from or supplement provisions of the contract; provided, however, that the term of any such contract in writing shall not exceed three (3) years. The person(s) designated by the Mayor to represent the City are hereby authorized to conduct all negotiations. Persons so designated shall not be elected government officials. The Mayor shall keep the Common Council informed at regular intervals of the progress of negotiations. To ensure effective Collective Bargaining, as much as is possible, and to further expedite the Collective Bargaining process, the following negotiation procedure shall be utilized:

(A) To initially commence Collective Bargaining the parties shall follow the terms and conditions of their labor agreement with respect to notifications regarding the intent and desire to negotiate. The parties shall attend and Collectively Bargain in good faith at all negotiation meetings that may be required under each such Collective Bargaining Agreement. This requirement

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1 to initially meet and negotiate shall include three (3)
2 mandatory Collective Bargaining sessions between the
3 parties, such meetings all to take place within thirty
4 (30) calendar days after initial notification as pro-
5 vided by one party to the other concerning the commence-
6 ment of Collective Bargaining;

7 (B) If after exhaustion of Step (A) above, the parties
8 have not reached an agreement, the parties will still
9 be obligated to bargain in good faith. In that regard
10 the parties shall be required to have at least two (2)
11 bargaining sessions within a fourteen (14) calendar day
12 period after the ending of the thirty (30) day period
13 referenced in subparagraph (A) above;

14 (C) If impasse still exists after Steps (A) and (B)
15 above, then the parties shall continue to confer and
16 meet for the purposes of Collective Bargaining and the
17 parties shall utilize a three (3) member panel mediation
18 committee. The three (3) member panel shall be ap-
19 pointed as follows:

20 A representative designated by the mayor, such repre-
21 sentative not previously involved in the Collective
22 Bargaining process with the City and the Union in
23 question;

24 A representative designated by the union, such repre-
25 sentative not previously involved in the Collective
26 Bargaining process with the City and the Union in
27 question;

28 And a mediator from the Federal Mediation and Concilia-
29 tion Service.

30 Members of the panel shall serve without compensation.
31 The three (3) member panel shall perform mediation
32 functions between the parties and shall be utilized to
33 define the differences between the parties; their re-
34 spective positions; and to evaluate each such position
35 and make recommendations as to a fair and just settle-
36 ment. The matters, among others, to be given weight by
37 the mediation panel in arriving at a decision shall
38 include:

- 39 (1) Comparison of factors in respect to City Depart-
40 ments with similar and like factors prevailing in
41 other Second Class cities in Indiana;
42 (2) The interest and welfare of the public;
43 (3) Comparison of peculiarities of employment in re-
44 lation to other trades or professions, in particular.
45 (a) Hazards of employment
46 (b) Physical qualifications
47 (c) Educational qualifications
48 (d) Mental qualifications
49 (e) Job training and skills
50 (4) Such other matters as the mediation panel may deem
51 pertinent or relevant

1 The three (3) member panel shall have the right to meet with
2 either side alone or with both sides and further require meetings
3 between the parties for purposes of Collective Bargaining. Such
4 mediation process under this subparagraph (C) shall occur for
5 a period of thirty (30) calendar days.

6 The time limits and other requirements as referenced in subpara-
7 graphs (A), (B) and (C) may be altered or changed by mutual
8 agreement of the City and the appropriate Labor Organization.
9 The requirements to bargain and negotiate as herein referenced
10 in this Section 8 shall not impose upon either side the duty
11 to bargain over issues that are part and parcel of a Collective
12 Bargaining Agreement that have not expired.

13 In addition, during Steps (A), (B) and (C) both parties shall
14 adhere to the terms and conditions of the Collective Bargaining
15 Agreement even though same may have expired on its face. That
16 is, such agreement shall be deemed to be in full force and effect
17 during Steps (A), (B) and (C) and the City shall not have the
18 right to terminate the agreement during such period nor the
19 right to unilaterally change the terms and conditions thereof
20 including the payment of wages. Likewise, the Union shall be
21 obligated to follow the terms and conditions of the appropriate
22 Collective Bargaining Agreement during such Steps.

23 SECTION 9. Economic Recourse. After completion of
24 Steps (A), (B) and (C), as contained in Section 8 above and
25 an impasse still exists, both parties are urged to continue
26 Collective Bargaining in hopes of reaching a settlement. Unless
27 time limits are mutually extended by the parties, each party
28 shall have rights as contained in this Section 9. Either party
29 shall have the right to terminate the Collective Bargaining
30 Agreement by serving written notice upon the other with a copy
31 of same being given to the three (3) member panel. Such notice
32 shall indicate that the notifying party is desirous of terminating
33 the labor agreement, specifying in the notice the date upon
34 which termination shall occur, such date being no less than
35 seven (7) days from date of giving notice. During this seven
36 (7) day period, the parties shall meet and confer. In addition,
37 the three (3) member panel shall have the right within such
38 seven (7) day period or other longer notice period, if so provided,
39 to require the parties to meet and negotiate one (1) additional
40 time within the notice period. Upon the lapsing of the notice
41 period the Union may resort to appropriate economic recourse
42 including but not limited to the right to strike. Such strike
43 must be duly sanctioned by the labor organization and any and
44 all such picketing associated with the strike shall be off work
45 premises. The right to strike shall not include a right to
46 a slow down at work, but rather a striking employee shall be
47 required to leave work. Appropriate rules governing strikes
48 and picketing with respect to peacefulness; access to City proper-
49 ty; and private property shall be observed. In the event a
50 labor organization is terminated as herein provided, the City
51 shall no longer, at its option, be bound by the labor agreement.

52 The City employees shall have the right to engage in the right
53 to strike. If the object of a strike is to obtain from the
54 City some economic concession, such as higher wages, shorter
55 hours, or better conditions of employment, the strike shall
56 be called an Economic Strike. They retain their status as em-
57 ployees and cannot be discharged, but they can be replaced by
58 the City. If the City has hired bona fide permanent replacements
59 who are filling the jobs of the economic strikers when the striker

Labor Practice Strikers who have made an unconditional request for reinstatement by the company, the company shall recall them to work, if the strikers are not entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified upon openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for reinstatement. If an offer to return has been rejected, the employee may be immediately recalled.

SECTION 10. Severability. If any term or provision of this Ordinance is deemed to be unenforceable, illegal or unconstitutional or otherwise invalid as so deemed by a Court of competent jurisdiction, then the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 11. Common Council Approval. Notwithstanding anything herein to the contrary, all decisions in regards to annual pay and monetary fringe benefits shall be subject to approval by the Common Council, in accordance with Budgetary Guidelines, as provided by I.C. 36-4-7-3.

SECTION 12. Effective Date. This Ordinance shall be in full force and effect commencing September 1, 1986, assuming same has been passed by the Common Council and duly approved by the Mayor; ~~provided, however, that this Ordinance shall apply only to those bargaining units who have signed contracts with the City by that date. Once a bargaining unit has signed contract, it is covered by this Ordinance.~~

Councilmember

APPROVED AS TO FORM AND LEGALITY

Bruce O. Boxberger, City Attorney

Stanley A. Levine, Attorney for Common Council

THE UNDERSIGNED AS REPRESENTATIVES OF THE UNIONS NAMED IN THE FIRST PAGE OF THIS ORDINANCE
SUPPORT AND ASK FOR COUNCIL'S SUPPORT AND PASSAGE WITH THE DELETIONS AND AMENDMENTS AS SHOWN.

Ken Henry Ken Henry, I.B.T.C.W. & H. Fred Roberts Fred Roberts, I.A.M. John Brown John Brown, I.U.O.E.

James LaFever Richard Hewitt Gay H. Schmidt
James LaFever, I.B.F.O. Richard Hewitt, O.P.E.I.U. Gay H. Schmidt, I.B.E.W.

BILL NO. S-86-05-49

as amended

REPORT OF THE COMMITTEE ON Committee of the Whole
WE, YOUR COMMITTEE ON Committee of the Whole REGULATIONS
REFERRED AN (ORDINANCE) (RESOLUTION) TO WHOM WAS
Bargaining with respect to employees of the City of Fort Wayne,
Indiana

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)
(RESOLUTION)

YES

NO

Ben Eisbart

BEN A. EISBART
CHAIRMAN

JANET G. BRADBURY
VICE CHAIRWOMAN

DONALD J. SCHMIDT

THOMAS C. HENRY

CHARLES B. REDD

CONCURRED IN 6-24-86

Sam Takano

SANDRA E. KENNEDY
CITY CLERK

MARK GIAQU
JIM STIER
MIKE BURRS

Mark G. Schmidt

Mike Schmidt